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Inter-Office Memorandum

TO:	DAVID DAVIES NERIDA WHITE REG HODGSON	**DATE:**	MAY 24, 1994.
FROM:	GREG FOWLER	**REF:**	A:ACTPPP.GLF6
SUBJECT:	ACT PUBLIC PLACE PROPOSAL		

On May 19 the Standing Committee on Conservation, Heritage and Environment released its Report entitled "Clearing the Air", which modified Wayne Berry's original legislative proposal concerning smoking in public places in the ACT.

This Committee's proposals, in very brief terms, are more favourable to the industry than the originals. Nonetheless, they leave much to be desired. They would ban smoking immediately in shopping malls, sports facilities, venues for under 18's, and so forth. Restaurants would immediately be 50% non-smoking for a period of twelve months, after which they would be 100% smoke-free unless they received an exemption (which would be contingent upon meeting IAQ standard AS1668.2). Taverns, bars and the like would be unaffected for thirty months, after which they would become smoke-free unless an exemption were granted. If exemptions were granted, restaurants could maintain a smoking area comprising 25% of the premises. Taverns and bars would be allowed a 50% smoking area.

Of particular interest is the Committee's discussion of the EPA Risk Assessment and Ventilation. The proposals do not question the general conclusions of the EPA Report. However, the Committee draws a distinction between spousal exposure and exposure encountered by those in the general public:

> The Committee considers that, while a link between lung cancer and long term exposure to high levels of ETS by non-smoking spouses of smokers can be established, it does not necessarily follow that the same level of risk can be applied, or is encountered by, the general public in the course of their daily lives. (Paragraph 2.18).

Thus, while the Committee incorrectly accepts the EPA's "spousal" conclusion, it properly sees public place exposure as a different entity entirely.

The Committee rejects evidence presented by anti-smoking advocates and concludes that "an air quality standard for ETS has already been set" by AS 1668.2. (Paragraph 3.16). The Committee concludes that this standard "should achieve a balance between the health and comfort needs of occupants and the technical problems of eliminating all contaminants". (Paragraph 3.17).

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As mentioned above, while the proposal is more favourable to the industry than the original, there is room for improvement. As an immediate concern, we should determine the next step in the legislative process and the timing for further debate/consideration. We will also need to determine the areas, if any, we wish to address. In that regard, I have the following suggestions:

- The Committee's Recommendation 5 lists thirteen types of venues which must be smoke-free upon passage of the legislation. For many or all we may wish to argue that accommodation is a better approach (although this is not a likely winner). In addition, a number of these types of venues are described in overly broad or ambiguous terms. These include "retail shops", "exhibitions, displays and meeting areas" and venues primarily for those under the age of 18. These exceptions could swallow the rule if not more particularly described.

- Another recommendation of the Committee which is at odds with our general position is the designation of maximum percentage of certain venues that might remain smoking areas. We might argue that, provided adequate ventilation/IAQ, it should be left to the proprietor to determine what portion of his or her establishment ought to be smoking/non-smoking. This is an enterprise decision, not a matter for government intervention.

- The Committee's proposals are silent with regard to naturally ventilated venues or venues with technologically inferior ventilation. The proposals are also silent with respect to a possible segregation solution. Perhaps a segregation/IAQ testing solution could be suggested for such venues, consistent with the Committee's approach of allowing smoking contingent upon proper IAQ.

- The Committee apparently received inadequate information on the issue of loss of revenue in the hospitality industry resulting from smoking bans (see Paragraph 5.6). The train may have left the station on this one, but we may wish to consider introducing more evidence on this point into the debate.

- The provision of a $500 fine for smoking in a prohibited area seems excessive. We may wish to address this issue as well.

- Ms. Ellis wrote a rather strident dissenting report, which we may wish to consider refuting.

In addition to the "negatives" in the Report, there are a fair number of "positives" that we may wish to emphasise. They are already under attack by the Anti-smoking lobby (eg. ventilation approach to ETS).

Please, let me know if I can do anything further with regard to this Report.

Best regards,

for GREGORY L. FOWLER

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